
Foreign Military Sales and the Missile Technology Control Regime: A New Focus For the Future

By

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June 7, 2009, intermediate ballistic and cruise missiles carrying chemical and biological weapons rain down on the Bandarian capital and Bandarian military bases. The missiles, launched from neighboring Zastavia, shattered Bandaria's infrastructure and military forces. Allied forces were stunned by the swiftness of the attack, in particular the sophistication of the delivery systems. The technological advances Zastavia made in developing weapons of mass destruction and acquiring the capability to deliver such weapons left intelligence services scrambling to uncover the source of Zastavia's rapid advancements.

While this scenario is fictional, in reality there are countries and terrorist organizations that are in full press to acquire weapons of mass destruction along with the delivery systems for those weapons. Foreign sources use a variety of methods, both legal and illegal to acquire the technical knowledge required to develop the sophisticated hardware to conduct such operations as seen in our fictional scenario. To combat the proliferation of weapons, international agreements and treaties are in force to limit the spread of weapons, from conventional to chemical, biological and nuclear, as well as the hardware to deliver these weapons of mass destruction. The Missile Technology Control Regime (MTCR) is one such international agreement.

In April 1987, the G7 nations of Canada, West Germany, France, Italy, Japan, the United Kingdom, and the United States created the Missile Technology Control Regime, which drafted guidelines for the transfer of sensitive missile related hardware and technology. Currently thirty-three nations have agreed to the guidelines of the MTCR. The purpose of the MTCR is to "limit the risks of proliferation of weapons of mass destruction by controlling transfers that could make a contribution to delivery systems for such weapons."¹ These guidelines provide member nations a framework in which to develop national export policy within the laws of each individual nation. The guidelines and the annex provide the framework for a case-by-case consideration of transfers of items contained in the annex, while at the same time not impeding national space programs or international cooperation in space programs.²

The MTCR annex is the heart of the regime. It contains a list of twenty items that are to be considered controlled items and subject to export controls. These twenty items are grouped into two categories: Category I consists of the first two items which are considered the most sensitive and subject to a strong presumption of denial for transfer to foreign governments and entities; Category II consist of the remaining eighteen items and particular restraint will be exercised in considering transfers.

In considering transfers of MTCR items, the guidelines provide criteria to evaluate such transfers:³

- Concerns about the proliferation of weapons of mass destruction;

¹ Missile Technology Control Regime, http://www.state.gov/www/global/arms/treaties/mtrc_anx.html

² Ibid.

³ Ibid.

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- The capabilities and objectives of the missile and space programs of the recipient state;
 - The significance of the transfer in terms of the potential development of delivery systems (other than manned aircraft) for weapons of mass destruction;
 - The assessment of the end-use of the transfers, including the relevant assurances of the recipient states;
 - The applicability of relevant multilateral agreements.

The United States Government has adopted the MTCR guidelines and codified the requirement to apply export controls in the *Arms Export Control Act* (P.L. 90-629) Chapter 7, Control of Missiles and Missile Equipment or Technology.⁴ The *Arms Export Control Act* (AECA) is the legal authority for the sale, lease, financing, and cooperative programs involving defense articles or services as found in the U.S. Munitions List. Controlled items under the MTCR are included in the munitions list and are subject to the same scrutiny as other defense articles. The AECA applies to direct commercial sale as well as foreign military sales and every effort is made to ensure that transfers of technology occur only in the national interest and in concert with U.S. foreign policy. However, there are times when technology is inadvertently released to countries in contradiction to foreign policy.

It is just such inadvertent and illegal releases of tools, materials and know-how that Colonel Craig McLane, Director Weapons Division, Defense Security Cooperation Agency, was referring to in his opening remarks to a recent gathering of specialists from program offices across all three services and other defense agencies, when he explained, “You are here because the Department of Defense has a problem, and we need your help to fix it.”

Colonel McLane is heading DoD’s effort to ensure foreign military sales (FMS) exports comply with the MTCR. The problem he refers to was highlighted by a 1999 Government Accounting Office report to the Chairman, Committee on International Relations, House of Representatives regarding how defense articles and technical information to be delivered under a letter of offer and acceptance are checked for missile technology. As its starting point, the report examined an FMS case which delivered all the machinery and supplies to equip a customer’s co-production factory. Among the many lines of the case were entries for the delivery of tooling and quality assurance equipment. Unbeknownst to both the implementing agency and the Department of State, some of the seemingly innocuous items that were delivered under those lines were, in fact, desperately sought by agents of covert missile development programs. Specifically, they were an automated lathe-like machine for spinning forms out of fiberglass, and a high-power x-ray for checking welds. These items are unclassified, non-sensitive, commercially available industrial equipment but, because they are not commonplace and it is not possible to build long range ballistic missiles without them, they are listed in the MTCR Annex. Unfortunately, the Department of State reviewers familiar with the Annex could not tell that these items were included in the case, while the implementing agency reviewers who were familiar with the case were not aware of the Annex.

In Government Accounting Office discussions with the military departments, it became clear that the problem was unique to FMS and stemmed from confusion over who was responsible for implementing the MTCR. The military departments did not expect their program offices to be familiar with missile technology, and believed that the Department of State was conducting such reviews. The Department of State did not expect its missile experts to be able to extrapolate from

⁴ *Arms Export Control Act* (P.S. 90-629), Section 71, p. 424.

the lines of an LOA the complete list of exports associated with each FMS case, and believed that Department of Defense was conducting the reviews. The Government Accounting Office (GAO) report concluded:

The U.S. government has not established a process for ensuring that certain controlled items are fully and systematically identified when reviewing requests or approving agreements under the FMS program. As a result of weaknesses in the review process, items controlled by an international missile nonproliferation agreement have been transferred under the program without proper review and approval.”⁵

In response to the GAO report critical of the FMS review process, DSCA has taken two steps to address the deficiencies. First, new policy was developed and implemented in the *Security Assistance Management Manual (SAMM)*, DoD 5105.38-M, requiring the System Program Office, Program Manager, or equivalent level office to perform a technical review of each LOA during the development process to identify potential MTCR controlled items.⁶ If potential MTCR controlled items are identified, the MILDEP MTCR point of contact will review the LOA and forward a list of items to DSCA. DSCA will forward this list to the Regional Security and Arms Transfer Directorate, Bureau of Political/Military Affairs, Department of State for vetting of the LOA by the Department of State.

The second action implemented by DSCA is to develop a course for personnel dealing with the development of LOAs and reviewers. The course design promotes awareness throughout the security assistance and acquisition communities of MTCR guidelines.

In October 2002, the Defense Institute of Security Assistance Management (DISAM) will assume responsibility for the development and conduct of the MTCR course. The objective of this course is to familiarize the student with the requirements of the MTCR guidelines, including the annex of controlled items, and the role of the MTCR in the management of security cooperation and/or foreign military sales programs. The curriculum provides an overview of the FMS process, provisions of the MTCR, discussion of the categories of controlled items, roles and responsibilities of Department of State, Commerce and Defense, and the process for reviewing LOAs to ensure accurate MTCR reporting. The course is currently in development and is scheduled to be presented in mid 2003.

For information concerning the MTCR course contact Lieutenant Colonel Rimpo, (937) 255-8187, DSN 785-8187 or e-mail william.rimpo@disam.dsca.osd.mil.

About the Author

Lieutenant Colonel Bill Rimpo is an assistant professor of security assistance management at the Defense Institute of Security Assistance Management. His duties include functional and course coordinator for the International Program Security Requirements Course and Deputy Director, Academic Support. He graduated from the Air Force Institute of Technology with a degree in logistics management in 1986. He served in a variety of operations and maintenance positions in the Inter Continental Ballistic Missile career field as well as logistics plans in Air Force Materiel Command and Defense Logistics Agency.

⁵ *Review Process for Controlled Missile Technology Needs Improvement*, GAO/NSIAD-99-231, September 1999, p 4.

⁶ *Ibid*, p. 15
